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U.S. COURT OF APPEALS

IN THE UNITED STATES DISTRICT COURT

JUN 15 2011

FOR THE DISTRICT OF HAWAII

FILED \_\_\_\_\_  
DOCKETED \_\_\_\_\_ DATE \_\_\_\_\_ INITIAL \_\_\_\_\_

UNITED STATES OF AMERICA, )

CV. NO. 09-00194 REJ

)

CR. NO. 01-00382 REJ

)

Plaintiff-Appellee, )

PROPOSED ORDER DENYING A

)

CERTIFICATE OF APPEALABILITY

vs. )

)

PACKWARD KALEILANI TOELUPE, )

)

Defendant-Appellant. )

)

10-17707

PROPOSED ORDER DENYING A CERTIFICATE OF APPEALABILITY**I. Introduction**

On January 25, 2011, the Ninth Circuit Court of Appeals remanded this matter to the district court for the "limited purpose of granting or denying a certificate of appealability at the court's earliest convenience." Accordingly, based upon this Court's Opinion and Order filed on October 26, 2010, and incorporated herein by reference, this Court DENIES Petitioner a Certificate of Appealability as Petitioner has not made a substantial showing of the denial of a constitutional right.

**II. Certificate of Appealability**

A certificate of Appealability may only be issued if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). The petitioner is required to show that reasonable jurists could debate whether the issues could have been resolved differently or are "adequate to deserve encouragement to proceed further." Slack v. McDaniel,

EXHIBIT "B"

529 U.S. 473, 483 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983), superseded on other grounds by 28 U.S.C. § 2253(c)(2)); see also Mendez v. Knowles, 556 F.3d 757, 771 (9th Cir. 2009).

Here, Petitioner has made no such showing. Reasonable jurist could not debate whether these issues could have been resolved differently. Further, the issues raised are not "adequate to deserve encouragement to proceed further." Slack, 529 U.S. at 483. Accordingly, the Court DENIES Petitioner a Certificate of Appealability.

#### CONCLUSION

For the reasons set forth above as well as this Court's Opinion and Order filed on October 26, 2010, **DENIES** Petitioner a Certificate of Appealability as Petitioner has not made a substantial showing of the denial of a constitutional right.

IT IS SO ORDERED.

DATED: June 15, 2011, at Honolulu, Hawaii.

  
ROBERT E. JONES  
United States District Judge

United States v. Packward K. Toelupe

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"Proposed Order Denying a Certificate of Appealability"